

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ALFONSO PERCY PEW,
Plaintiff,

v.

JOHN WETZEL, et al.,
Defendants.

CIVIL ACTION NO. 3:14-CV-1519
(Judge Kosik)

ORDER

AND NOW, THIS 25th DAY OF FEBRUARY, 2016, IT APPEARING TO THE COURT THAT:

(1) Plaintiff, Alfonso Percy Pew, an inmate confined at SCI- Forest, Marienville, Pennsylvania, filed a complaint in the instant action on August 5, 2014, along with a Motion for Leave to Proceed in Forma Pauperis (Doc. 3);

(2) On May 1, 2015, this court filed a Memorandum and Order dismissing the complaint pursuant to 28 U.S.C. § 1915(g), the Three Strikes Rule (Docs. 30 and 31);

(3) Plaintiff filed a Notice of Appeal in the United States Court of Appeals for the Third Circuit (Doc. 32);

(4) On June 4, 2015, Plaintiff filed a Motion to Vacate the Judgment FRCP 59(e), 60(b) (Doc. 33);

(5) The Court of Appeals dismissed the Appeal for failure to prosecute on January 11, 2016 (Doc. 35);

(6) On January 15, 2016, Magistrate Judge Martin C. Carlson filed an Amended Report and Recommendation recommending that the Motion to Vacate Judgment (Doc. 37) be denied;

(7) Specifically, the Magistrate Judge set forth the law surrounding motions for reconsideration and the law surrounding 28 U.S.C. § 1915(g), and found that

Plaintiff's motion does not sufficiently allege newly discovered facts showing that he was in imminent danger of serious bodily harm at the time he filed the complaint, or that there was deliberate indifference to his medical needs;

AND, IT FURTHER APPEARING THAT:

(8) If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a de novo review of his claims. 28 U.S.C.A. §636(b)(1)(C); Thomas v. Arn, 474 U.S. 140, 150-53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987);

(9) Plaintiff has not filed Objections to the Report and Recommendation;

(10) We have reviewed the Report of the Magistrate Judge and concur with his recommendation;

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Amended Report and Recommendation of Magistrate Judge Martin C. Carlson filed on January 15, 2016 (Doc. 37) is **ADOPTED**;

(2) Plaintiff's Motion to Vacate Judgment (Doc. 33) is **DENIED**;

(3) The action is **DISMISSED without prejudice** to be refiled if Plaintiff pays the filing fee required by law; and,

(4) The Clerk of Court is directed to **FORWARD** a copy of this Order to the Magistrate Judge.

s/Edwin M. Kosik
Edwin M. Kosik
United States District Judge